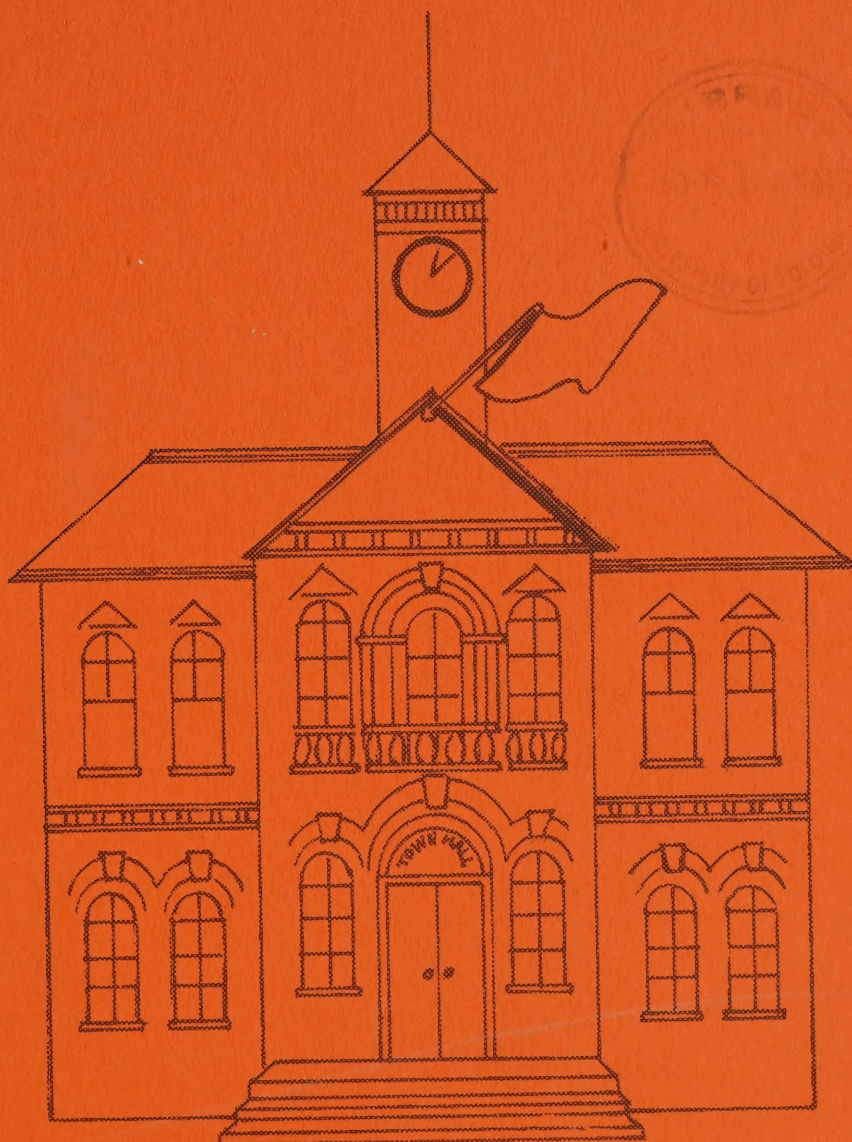


December 1984

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THE MUNICIPAL TAX SALES ACT, 1984



Ministry of
Municipal Affairs
and Housing

Claude F. Bennett
Minister

Ward Cornell
Deputy Minister

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INTRODUCTION

Prior to the coming into force of the Municipal Tax Sales Act, 1984, two different systems existed in Ontario for the sale of property for arrears of municipal real property taxes. The procedures contained in the Municipal Act and those in the Municipal Affairs Act have been used by municipalities for many years as a means of last resort in collecting real property taxes owing to them. The Government decided however, that there was a need to provide greater procedural protection for individual ratepayers than that which was accorded under the existing systems.

As a result, the new Act eliminates the tax registration and tax sale procedures and extends to all municipalities in the province a new uniform procedure for the collection of tax arrears. The Act combines some of the best features of the two previous systems and comes into force on January 1, 1985.

This bulletin summarizes the new tax sales procedure. It is only a summary of the process and is not a substitute for the statute. Specific references should be made directly to the statute where necessary.

ROLE OF THE TREASURER

Local Treasurer

Under the procedure established by the Act, the treasurer or an officer or employee to whom the treasurer has delegated his authority, assumes the lead role in the administration of the new process. Subsection 3(1) provides that the treasurer may, unless otherwise directed by council, register a tax arrears certificate against any property with respect to which real property taxes are owing, after the required period(s) has (have) expired.

County/Upper Tier Treasurer

Section 17 of the Act provides that counties and metropolitan, regional and district municipalities may enter into an agreement with any local municipality within the county, metropolitan, regional or district boundaries. The agreement authorizes the upper tier treasurer to carry out the duties of the local treasurer under the Act. Should such an agreement be entered into, the upper-tier treasurer assumes the lead role in the new process.

DEFINITIONS

Before reviewing the process involved in the Act, an examination of a number of defined terms will be of assistance.

- i. Cancellation price - s.1(1)(a) is an amount equal to all the tax arrears owing, plus all current real property taxes owing, penalties and interest, and all reasonable costs incurred by the municipality after the treasurer becomes entitled to register a tax arrears certificate. It also includes costs such as those incurred in any initial title search undertaken in contemplation of proceeding under the Act.

Included in the costs of proceeding under the Act are legal fees and disbursements, the cost of a survey, the costs of preparing and registering an extension agreement and advertising expenses.
- ii. Real property taxes - s.1(1)(h) includes the amount of taxes levied on real property under the Municipal Act, Education Act and the Unconditional Grants Act as well as any amounts owed under the Drainage Act, the Tile Drainage Act, the Shoreline Property Assistance Act and the Local Improvement Act. Also, any amount "deemed to be taxes" on real property under any general or special Act is included in the definition. All other amounts such as hydro arrears or weed cutting charges are not to be included within this definition.
- iii. Tax arrears - s.1(1)(j) are real property taxes placed on or added to the collector's roll that remain unpaid on the first day of January in the year following that in which they were placed on or added to the roll. For example, taxes levied on January 1, 1985, become arrears if any portion is outstanding on January 1, 1986.
- iv. Improved land - s.1(1)(c) is land which is liable to be separately assessed, and which has a building on it. Land which is in actual agricultural use is also considered improved, whether or not it has any buildings on it.
- v. Vacant land - s.1(1)(m) is a parcel of land with no buildings on it which is separately assessed but which does not include any improved land.

EXAMINATION OF THE PROCEDURE

The following discussion of the procedure required by the Act should be read in conjunction with the Act itself. Where reference is made to a certificate, notice or other instrument, those forms will be prescribed by regulation. A list of proposed forms is contained in Appendix IV. The forms, once approved by regulation, will be sent to municipalities in a separate publication.

1. Instituting the procedure - s.3(1):

Where any part of municipal real property taxes are outstanding on January 1st, after a two (2) year period for vacant land and three (3) years for improved land, the treasurer may, unless otherwise directed by council, prepare a tax arrears certificate and register it against the title to the land in the appropriate land registry office. For example, 1982 taxes that remain unpaid through to December 31st, 1984 would be subject to registration on January 1, 1985, in the case of improved land.

2. Tax Arrears Certificate - s.3(2),(4):

The certificate must contain an accurate description of the land suitable for land registry office purposes. There must also be an indication that the land described will be sold by public sale if the cancellation price is not paid to the municipality within one year of the registration of one certificate.

A tax arrears certificate for improved land cannot include more than one property or any vacant land that is a separate parcel. With regard to vacant land, only those lots on one registered plan may be embraced in one certificate.

3. First Notice - s.4(1),(2):

The treasurer is required to send or cause to be sent, within sixty (60) days of the registration of a tax arrears certificate, a notice to the owner and all interested parties, advising of the registration and potential sale of the property. Included in those who should receive notice are the assessed tenants in occupation of the land and their spouses. Where a notice has been sent to the owner of the land a separate notice must be addressed to the "spouse of the (name of person)".

4. Public Trustee - s.4(3):

If a notice has been sent to a corporation, the treasurer must also send a copy of the notice to the Public Trustee at 145 Queen Street West, Toronto, Ontario M5H 2N8.

5. Limitations for Notice - s.4(5):

A person is not entitled to a notice if the treasurer has completed a reasonable search of the records of the registry, land titles and sheriff's offices, and the last returned assessment roll and does not find the person's address and the treasurer is not otherwise aware of the address.

A person is not entitled to a notice if that person has waived, (preferably in writing), his or her right to a notice.

6. Statutory Declaration - s.4(4):

After complying with the notice requirements the treasurer must prepare and register in the appropriate land registry office a statutory declaration, stating the names and addresses to whom notices were sent.

7. Payment of Cancellation Price - s.5(1),(2):

The Act permits any person to pay to the municipality the cancellation price within one year from the day on which the tax arrears certificate was registered. If such payment is received the treasurer must forthwith register a tax arrears cancellation certificate. Once the certificate is registered the process is halted. If the person paying the cancellation price received a notice of registration of a tax arrears certificate, then that person receives a lien on the property in the amount of the cancellation price. Should a person who has not been sent a notice pay the cancellation price, then such a person does not receive a lien.

8. Accounting - s.6(1):

A person who pays the cancellation price before the end of the one-year period may, unless the council has passed a by-law under section 15 setting a scale of costs, request the treasurer to prepare an

itemized breakdown of the cancellation price. The request must be in writing and made within thirty (30) days of the payment.

9. Extension Agreements - s.8:

The legislation permits a municipality to enter into an agreement with the owner of the land extending the time in which payment must be made. The agreement must be authorized by a by-law passed prior to the expiry of the one-year period mentioned in subsection 9(1).

The agreement may be subject to such terms and conditions that relate to the payment. It may set out such things as the number of installments required to be paid and the amount of each, but it cannot reduce the cancellation price nor prohibit any person from paying the cancellation price at any time.

Extension agreements must set out when and under what conditions the agreement is invalidated and state that upon payment by any person of the cancellation price the extension agreement is terminated.

The period of time in which there is an extension agreement cannot be counted by the treasurer in computing the time for the necessary notifications regarding a sale as required in subsection 9(1).

The agreement is to be open to inspection by the public and, upon request, the treasurer must produce the agreement and provide copies as required. The cost of providing copies is determined according to section 78 of the Municipal Act. Once the terms of the agreement are fulfilled or where payment is received the treasurer must register a tax arrears cancellation certificate.

10. Final Notice - s.9(1):

Should the cancellation price remain unpaid 280 days after the day of registration of the tax arrears certificate, the treasurer will be required to send a final notice. This notice is sent to the same parties who received the initial notice, and again warns of a pending sale if the cancellation price is not paid before the expiry of the one-year redemption period. The treasurer has thirty (30) days following

the end of the 280-day period to send the notices. A statutory declaration as to who was sent a notice is not required to be registered, but should be retained by the treasurer.

11. Sale - s.9(2):

If the cancellation price is not paid prior to the expiry of the one-year period and no extension agreement has been entered into, the treasurer must make a statutory declaration indicating to whom the final notices were sent.

The treasurer then must advertise that the property will be sold. The advertisement is placed once in the Ontario Gazette and once a week for four weeks in a newspaper that, in the treasurer's opinion, has general circulation in the municipality. If there is no local newspaper the treasurer must post a notice in the municipal office and at least one other prominent place in the municipality.

12. Method of Sale - s.9(3):

The method of sale of a property may be either by public auction or by public tender as determined by the treasurer. The sale will be subject to certain rules that will be established by Ontario regulation.

13. Minimum Acceptable Bid/Tender - s.18(2):

The minimum acceptable offer on a property will be the cancellation price.

14. Municipality May Bid or Tender - s.9(8):

A municipality may, if the council by resolution authorizes it, bid or tender on a property being offered for sale under this Act. The municipality must however, have a municipal purpose for the property if it does bid or tender.

15. Treasurer Gives Tax Deed - s.9(3)(a):

If there is a successful purchaser at a sale, the treasurer must prepare and register a tax deed in the name of the successful purchaser or in the name that the successful purchaser directs. The deed is final and binding when registered. Therefore, the treasurer must ensure before registering the deed that the procedures of the

Act have been complied with and that the tax deed is accurate in all respects.

16. Municipality Receives Title - s.9(3)(b):

If there is no successful purchaser who offers to pay as a minimum the cancellation price or if the sale price and land transfer tax is not paid, the municipality receives title to the property when the treasurer registers a notice of vesting in the name of the municipality.

17. Statutory Declaration - s.9(4):

At the time of registering either a tax deed or a notice of vesting, the treasurer must also prepare and register a statutory declaration that: the tax arrears certificate was registered at least one year before the land was advertised for sale; the notices were sent and statutory declarations were registered; the cancellation price was not paid within the one year period; and the land was properly advertised for sale.

18. Conveyance - s.9(5)(7):

A registered tax deed or notice of vesting acquired under this Act vests the lands free and clear of all interests except those of the Crown, any easements and restrictive covenants that run with the land and any interest or title acquired by adverse possession by abutting land owners in either the successful purchaser's or the municipality's name as the case may be. A conveyance does not relieve the purchaser from any responsibility for payment of any pending municipal taxes.

A tax deed does not impose upon the municipality the obligation to provide vacant possession. In other words, if a municipality sells a property it is not required to ensure that any persons living at the residence at the time of the sale are removed before the successful purchaser takes possession of the property.

19. Value of the Land - s.9(11):

The Act does not require the treasurer to determine the value of the land before undertaking a sale.

20. Distribution of the Proceeds - s.10(1):

The Act sets out how any proceeds from a sale must be distributed. The money must first be applied towards paying all of the cancellation price, secondly, to any person, other than the owner, who has an interest in the land, according to their priority at law, and finally to the former owner. It is the responsibility of the District Court to determine the distribution of the proceeds.

21. Payment - s.10(2):

Once the property has been sold the treasurer must pay the proceeds of the sale, less the cancellation price, into the District Court with a statement of the facts upon which the payment has been made.

22. Claims - s.10(3),(4):

Any person or party who claims an entitlement to the proceeds may apply to the District Court within one (1) year of the payment into the court for settlement of the claim. The court will then determine all of the entitlements.

23. Forfeiture to the Municipality - s.10(5):

Should no claims be made to the court within the one year period, the amount paid into the court is forfeited to the municipality. The municipality must apply to the court should it wish to obtain the funds.

24. Giving Notice - s.11(1):

The Act establishes the methods of giving the required notices. Any notice required to be sent may be sent either by certified or registered mail, or by personal delivery to:

- a) The address as shown on the last returned assessment role of the assessed owner;
- b) The Public Trustee where necessary;
- c) Those with a registered interest, at their address as shown in the land titles or registry office or where there is no address shown, to the solicitor whose name appears on the registered instrument;

- d) Those with an interest as shown by the index of executions under the Land Titles Act or by the index of writs received by the sheriff under the Registry Act, at the address of the person or the address of his or her solicitor.
- e) The spouse of the assessed owner at the address of the spouse or if that address is not known, then the notice is sent to the address of the land.

25. Notice to Assessed Tenants - s.11(2):

If a notice is to go to the assessed tenant in occupation of the land or to the spouse of the assessed tenant, it may be jointly given by personal delivery or by ordinary mail addressed to "the occupant and spouse" at the address of the land.

26. Notice by Placard - s.11(3):

If there are six or more assessed tenants in occupation of the land, instead of sending individual notices, the treasurer may post up a notice by placard on a place on the land where it will readily be seen by the assessed tenants.

27. Tax Arrears Cancellation Certificate - s.12(3):

If the treasurer becomes aware that he or she has failed to substantially comply with the notice provisions, or if there was an error or omission in the registration or sale of the land that misleads or otherwise harms the interests of a person, then the treasurer must register forthwith a tax arrears cancellation certificate. The treasurer may re-register a tax arrears certificate against the property and start again.

28. Halting the Proceedings - s.12(6):

The treasurer has the authority to halt the proceedings if there is some error, omission or neglect that makes it impractical or undesirable to continue. Also, if the treasurer is of the opinion that it would not be in the financial interests of the municipality to go on, the treasurer may stop the proceedings. Should such a decision be made, the treasurer will have to register a cancellation certificate.

Registration of the certificate does not prevent the treasurer from re-registering a tax arrears certificate and starting the procedure again.

29. Scale of Costs - s.15:

A municipality may pass a by-law establishing a scale of costs that may be charged as the reasonable costs of carrying out the procedures, in lieu of charging the actual costs of the municipality on each individual property that is registered. The scale must be such that it only meets the anticipated costs of the municipality in proceeding under the Act.

30. Treasurer May Delegate - s.16(2):

The Act permits a treasurer to delegate, in writing, his or her duties as required under the Act, to any officer or employee of the municipality.

31. Upper-Tier May Collect - s.17:

The Act makes provision for the county, metropolitan, regional or district councils to enter into an agreement, by by-law, with any local or area municipality to authorize the county or upper-tier treasurer to perform the duties of the local treasurer under the Act. The upper-tier treasurer would exercise the duties in respect of land within the local municipality.

The agreement may set out the amount of payment to the upper-tier out of the cancellation price that reflects their reasonable costs incurred during the procedures. As well, it may determine the method of cancelling the agreement and establish any other requirements that may be necessary to carrying out the agreement.

Where there is an agreement in effect only the upper-tier municipality may pass by-laws fixing a scale of costs and allowing for the entering into of extension agreements.

An agreement may be cancelled either by the upper-tier or by the local or area municipality at any time. The cancellation must be done according to the terms set out in the agreement. If this occurs, the municipality initiating the cancellation must inform the other by sending a certified copy of the by-law. When the agreement is cancelled, the local treasurer assumes the responsibility for the administration of the procedures required by the Act.

32. Transition Period - s.23:

A transition period is provided for those properties where a tax arrears certificate under the Municipal Affairs Act has been registered or where a certificate under section 433 of the Municipal Act has been issued prior to January 1, 1985. In these instances the proceeding will continue under the appropriate Act.

A compromise agreement entered into under the Municipal Affairs Act prior to the coming into force of the Municipal Tax Sales Act, 1984 continues for the life of the agreement.

Where no tax deed has been issued or a sale or assumption for municipal purposes of a property has not occurred by January 1, 1987, then such properties vest in the name of the municipality free and clear, except for certain restrictions, upon registration of a notice of forfeiture for each such property.

33. Coming into Force - s.24:

Section 1, and sections 17 and 18 (the upper tier agreements and the regulation-making powers) came into force upon Royal Assent. All other sections of the Act come into force on January 1st, 1985.

POINTS TO CONSIDER

Ministry Involvement: Although the Act removes the necessity of any ministry approval, ministry field services staff are available to assist municipalities with any matter that may arise with the introduction of the new procedure.

Vacant and Improved Land: There is a distinction between land classified as improved and land classified as vacant. Improved land may have a tax arrears certificate registered on title in the third year in which the taxes are in arrears, while vacant land may be registered in the second year.

Collectable Amounts: Only those amounts that are "deemed to be taxes" by a statute are collectable under this procedure. If the amounts are not specifically "deemed to be taxes" they cannot be placed on a tax arrears certificate.

No Vesting: Under the Act there is no vesting of the property in the name of the municipality upon registration of a tax arrears certificate. The title remains with the owner.

Notice Requirements: It is essential that the required notices be properly sent within the prescribed time. The first notice must be sent within sixty (60) days following the registration of the tax arrears certificate and a statutory declaration must be registered in the land registry office. The second notice must be sent within thirty (30) days after the expiry of the 280 day period from the day the tax arrears certificate was registered. It does not need to be registered by the treasurer. The notices must be complete and accurate.

Sale by Public Tender or Public Auction: The treasurer will have to decide by the time the ad is placed, if a sale of land will be by public tender or public auction.

Treasurer Registers Deed or Notice: Where there is a successful purchaser the treasurer must register the tax deed. Where there is no successful purchaser and the municipality receives title to the property,

the treasurer must register a notice of vesting in the appropriate land registry office.

Because the tax deed is final and binding the treasurer must ensure that all things have been done properly throughout the entire procedure.

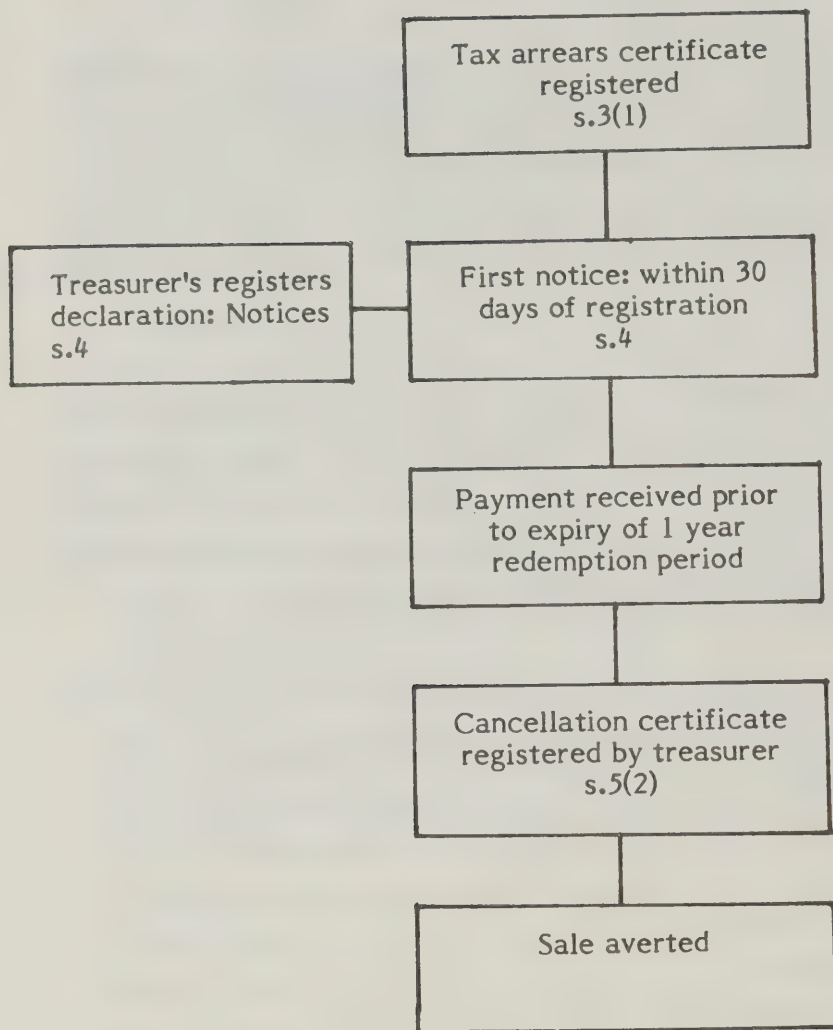
Land Transfer Tax: If there is a sale of land and the municipality determines that there is a successful bidder or tenderer, the person cannot be considered the successful purchaser until the sale price and land transfer tax owing on the sale price has been paid to the municipality. The treasurer will then pay the tax to the province upon registration of the tax deed.

Distribution of the Proceeds: If a property is sold, an amount equal to the cancellation price is retained by the municipality out of the sale proceeds. Should there be any money remaining the treasurer must pay it into the District Court. The court will determine the distribution of the remaining proceeds among the interested parties and the former owner.

Claiming Proceeds: Any person who claims any entitlement to the proceeds must apply to the District Court for payment.

APPENDIX 1

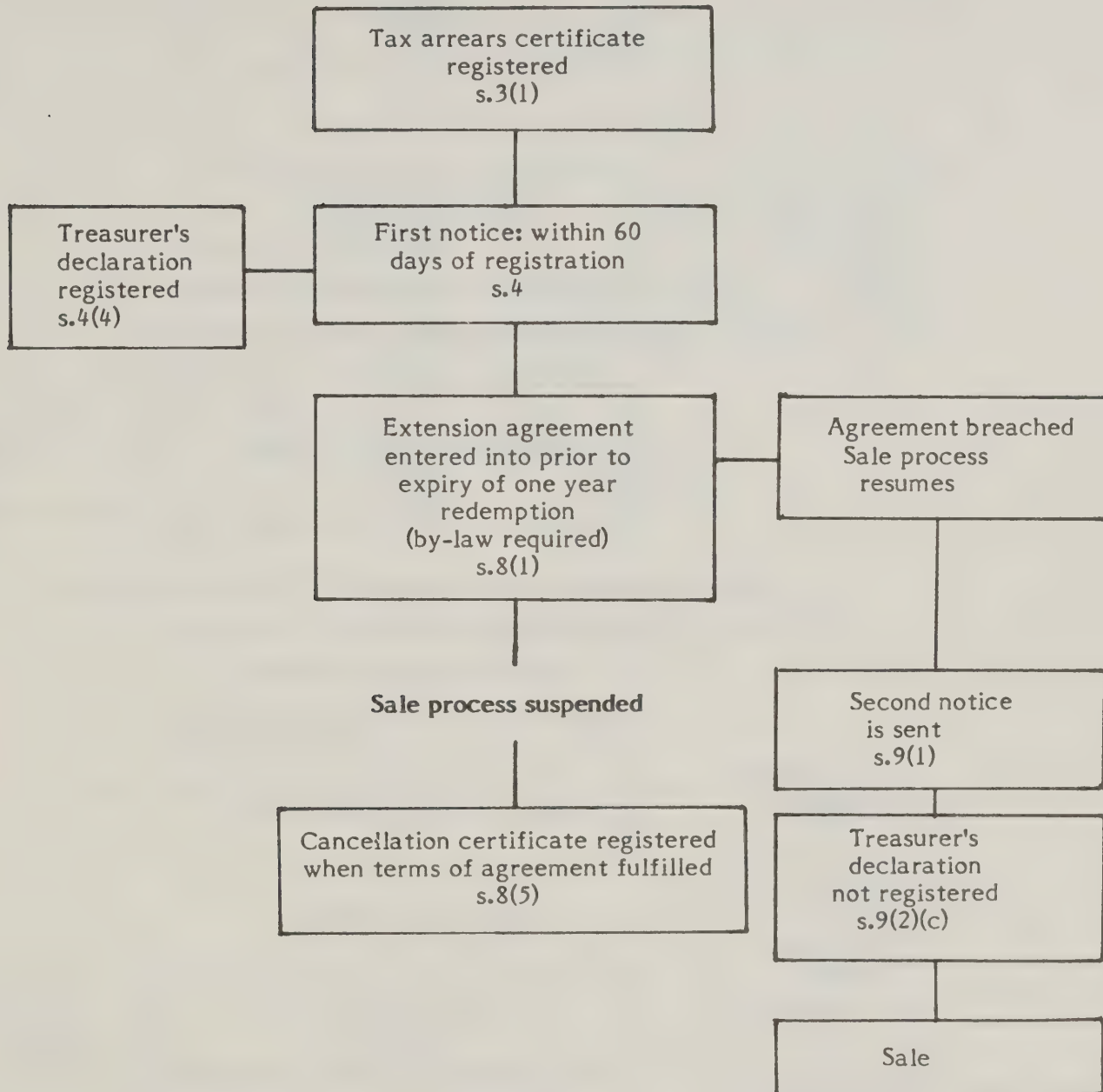
TAX SALES PROCEDURE WHERE THE TAX ARREARS ARE PAID



Any person may pay the full cancellation price to the municipality at any time prior to the expiry of the one-year redemption period. Should this occur, a potential sale of the property is avoided and the land returns to the status it had prior to the registration of the tax arrears certificate. The title of the property remains with owner of the land. A person who pays the cancellation price and who received a notice is entitled to a lien on the property in the amount of the cancellation price.

APPENDIX II

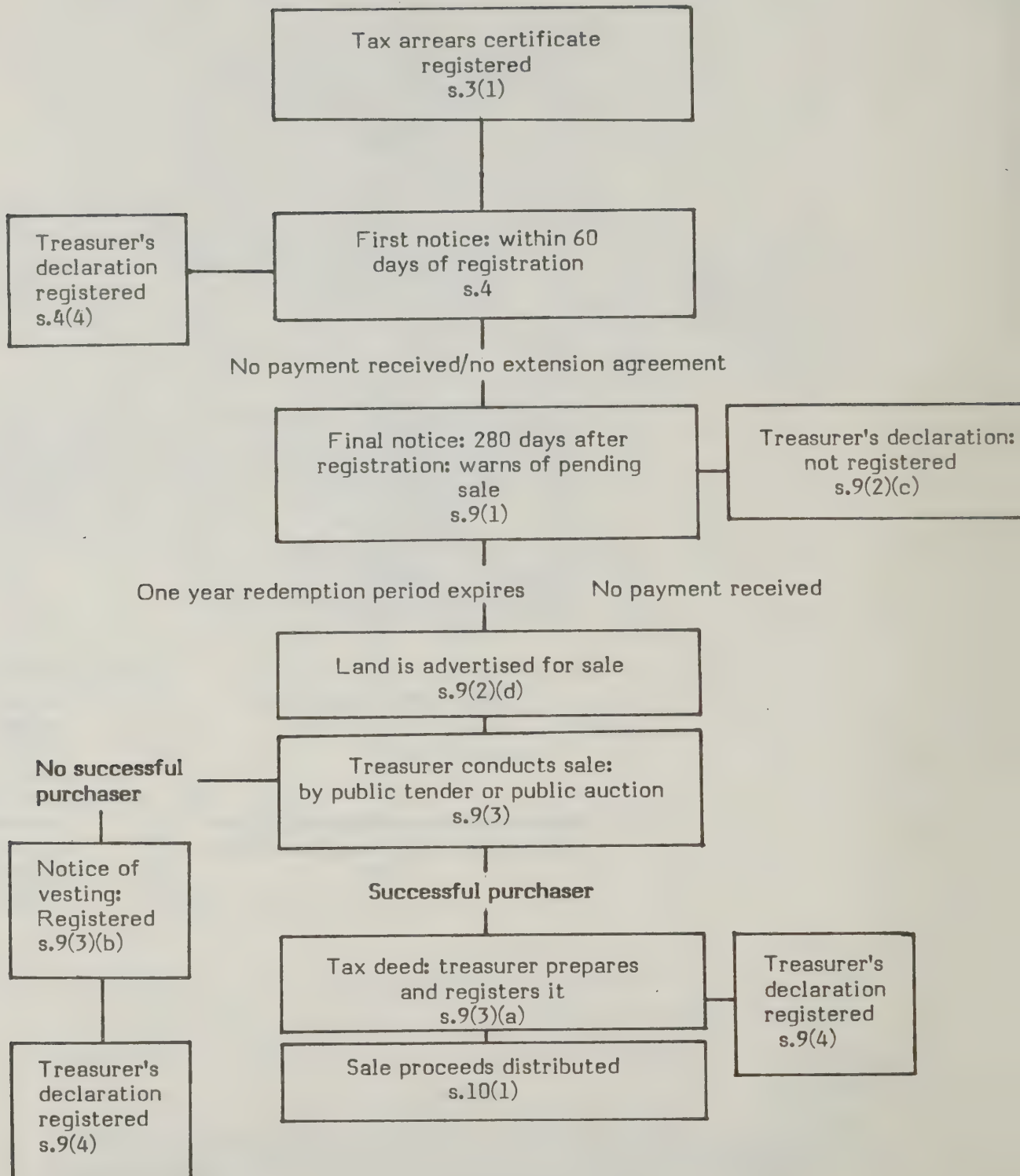
TAX SALES PROCEDURE WHERE AN EXTENSION AGREEMENT IS GRANTED



Extension agreements may be entered into by the municipality and the owner of the land at any time prior to the expiry of the one-year redemption period. The redemption period begins the day the tax arrears certificate is registered. The agreement must be authorized by by-law.

APPENDIX III

TAX SALES PROCEDURE WHERE A SALE OF PROPERTY OCCURS



APPENDIX IV

TAX SALE PROCEDURE LIST OF PRESCRIBED FORMS

- A. Tax Arrears Certificate
- B. Notice of Registration of Tax Arrears Certificate
- C. Statutory Declaration Regarding the Sending of Notice
- D. Tax Arrears Cancellation Certificate
- E. Final Notice
- F. Sale of Land by Public Tender - Advertisement
- G. Sale of land By Public Auction - Advertisement
- H. Tax Deed
- I. Notice of Vesting
- J. Statutory Declaration in Accordance with Subsection 9(4)
of the Municipal Tax Sales Act, 1984
- K. Payment into Court - Statement of Facts
- L. Notice of Forfeiture
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